



STEVEN L. MADSEN, ATTORNEY AT LAW

PO BOX 217

SOUTHWORTH, WA 98386-0217

PHONE: (360) 769-8245, FAX/DATA: (360) 769-0515, e-mail: madsen@pacific.telebyte.com

APR 28 1997

April 23, 1997

FILE

Mr. Ian Sievers, Bremerton City Attorney
239 4th Street
Bremerton, WA 98337

RE: City of Bremerton v. William Sesko

Dear Mr. Sievers,

I felt that it would be best to respond in writing to your telephone call from the other day regarding my client's position with respect to the various enforcement actions currently being conducted by the City. At this point, there appear to be disputes regarding three different properties: Lots 27-30 at Werner Road; 1701 Pennsylvania Avenue; and 3536 Arsenal Way.

With respect to the Werner Road property, I have as yet received no response from the City regarding the abatement action that was conducted there and for which a lien has been placed on Mr. Sesko's property in excess of \$18,000. There is currently a petition to Superior Court contesting the lien. See Superior Court Cause No. 96-2-01009-1. This lien was for removal of a house that had been placed on a transport trailer, but that could not be moved for lack of various permits. Mr. Sesko asserts that the house did not belong to him but to another party, and that the house was not even located on Mr. Sesko's property when it was dismantled by the city. RCW 35.80.030(2) clearly provides for de novo review of the City's actions in this matter. Where Mr. Sesko is simply contesting financial responsibility for the City's abatement action, it is unclear whether the mandatory arbitration rules apply. I would appreciate your insight on this matter. In any event, because the first half of the lien becomes due on April 30, 1997, Mr. Sesko is anxious to resolve this matter before significant penalties and interest begin to accrue. My personal opinion is that we should note a pre-trial hearing to determine whether the arbitration rules apply and to set either a trial or arbitration date.

With respect to the Pennsylvania Avenue property, I would suggest that this is a very complicated issue. As you may be aware, the soil at this site is highly contaminated by previous industrial operations that existed prior to Mr. Sesko purchasing the property. The Department of Ecology has labeled this a Level 1, top priority, cleanup site under the Model Toxics Control Act (MTCA). Remediation will no doubt be both extensive and expensive. However, Ecology has not yet named "potentially responsible parties" (PRP's) in this matter. At this point, while it may be that Mr. Sesko violated the Shoreline Management Act by acting without a permit, compliance with the City's current Cease and Desist Order will no doubt require input from the Department of Ecology as to necessary remediation. It may very well be that a good faith effort to restore the "ramp for the tractor mounted crane" as required by the order could cause even more damage to the waters of the Sound. Since it is likely that several parties other than Mr. Sesko will be found to be

liable for the site's contamination and hence financially responsible for the site's remediation, I would suggest that, prior to requiring Mr. Sesko to take any action at this time, a meeting be arranged between Mr. Sesko, the City, and Ecology, to identify a course of action.

Finally, with respect to the Arsenal Way property, I am still waiting to hear from Ms. Johnson regarding a hearing date before the Board of Appeals on Mr. Sesko's Notice to Vacate for inadequate plumbing. As you may be aware, Mr. Sesko has no running water to his home as a result of his refusal to pay stormwater drainage fees. Bremerton Municipal Ordinance 15.06.050 states, "A general stormwater rate shall be assessed all property owners who contribute to or benefit from the Utility stormwater system..." Mr. Sesko neither contributes to, nor benefits from the system. He has blocked the drain pipe which channels surface water from his property into the City's drainage system. Furthermore, his property receives much more stormwater inflow than it discharges, in effect acting as a "retention facility" under BMC 15.01.020(r)(4). The City has already, apparently, imposed a lien on Mr. Sesko's property without an opportunity for hearing. Subsequently shutting off his water supply (for which he is willing to pay) and then demanding his eviction as a result is an unduly coercive tactic. The relationship between Mr. Sesko's water service and stormwater discharge fees is tenuous at best. It is clearly within the City's ability to determine separate amounts owing for water, sewer, and stormwater drainage. The City's actions constitute an unconscionable end run around the proper procedure, that is, levying an assessment and subsequent foreclosure for failure to pay.

The other dispute over the Arsenal Way property, the Notice to Vacate for maintaining an illegal junkyard, seems to be the most problematic. It is Mr. Sesko's position that the City's junkyard ordinance is ambiguous at best. The property is currently zoned "Industrial Park". Permitted uses under that zoning designation include: "repair services other than auto and engines"; "research, development, and testing services"; "non-electrical machinery manufacturing"; "motor vehicle & equipment wholesale"; "electrical machinery & equipment manufacturing"; "other fabricated metal products manufacturing"; "professional, scientific control instrument manufacturing"; "wood products manufacturing"; "truck, trailer, & RV rental"; "marine craft sales & service"; "non-accessory parking"; "heating, plumbing, A/C equipment & services"; "wholesaling of products permitted in zone". Mr. Sesko believes that some or all of the property now located at the Arsenal Way site is currently legitimately used for the above legal purposes. If the City intends to carry out an abatement, Mr. Sesko requests, in advance, an itemization of all items the City intends to remove from the property. A representative from the City is welcome to come onto the Arsenal Way property at any reasonable time to conduct such an itemization provided advance notice is given to myself or Mr. Sesko. Further, Mr. Sesko reserves the right to dispute the City's characterization as "junk" the items it intends to remove.

As a procedural matter, there is also a dispute as to the appeal process to which Mr. Sesko is entitled with respect to the Arsenal Way Property. It is his position that the decision of the Board of Appeals denying Mr. Sesko's appeal of the Cease and Desist Order for the junkyard violation is appealable to the City Council pursuant to Bremerton Zoning Ordinance Chapter X, Section 9(B)(2) and then to Kitsap County Superior Court pursuant to Section G. Despite the clear language of the ordinance, a letter from Don Pratt sent in March of this year unilaterally denied Mr. Sesko's appeal to the City Council and informed him that

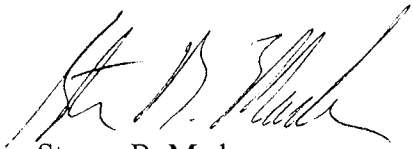
April 22, 1997

Page 3

he was entitled to no further appeals on the matter. Mr. Pratt's letter is particularly puzzling considering that a previous appeal under identical circumstances was allowed to go before the City Council for the Werner Road property. Before the City takes any further abatement action, it will be necessary to resolve these issues.

Please contact me at your earliest convenience to discuss these matters further. My client is willing to cooperate with the City in resolving this matter amicably.

Sincerely,

A handwritten signature in black ink, appearing to read "S. B. Madsen", with a stylized flourish at the end.

Steven B. Madsen